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IN THE

Supreme Court of the United States

OCTOBER TERM, 1926

No. 312

GEORGE FORD, GEORGE HARRIS, J. EVELYN VINCENT QUARTARARO, CHARLES H. BELANGER, *Petitioners,*

v.

THE UNITED STATES OF AMERICA, *Respondent.*

Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

SUPPLEMENTAL BRIEF FOR THE PETITIONERS

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SUPPLEMENTAL BRIEF FOR THE PETITIONERS

STATEMENT OF THE CASE

The argument contained in this brief is supplemental to that in the principal brief heretofore filed on behalf of the petitioners (defendants below). In that

brief the case has been stated and only the facts relevant to the argument here urged will be stated in connection with that argument.

SPECIFICATION OF ERROR

(In Addition to Errors Specified in Principal Brief)

(8) The District Court erred in holding that venue was properly laid in that court to try an offense consisting of a conspiracy entered into beyond the jurisdiction of the United States and an overt act in furtherance thereof committed in the Northern District of California. The Circuit Court of Appeals erred in sustaining the action of the District Court.

SUMMARY OF ARGUMENT

PART VIII

The record clearly shows that the crime as developed by the proof of the Government and as submitted by the trial judge to the jury consisted of a conspiracy entered into in Canada and overt acts in furtherance thereof in the Bay of San Francisco. This was the theory of the trial judge and the only theory which can connect the vast number of otherwise unconnected and unrelated acts admitted in evidence against all defendants. Such conduct does not constitute a crime committed in the Northern District of California nor a crime begun in one district of the United States and completed in another. Therefore venue was not properly laid in the District Court and that court was without jurisdiction of the offense, if any.

ARGUMENT

PART VIII

The District Court Had No Jurisdiction of the Crime As Developed by the Proof of the Government and as Submitted by the Trial Judge to the Jury.

THE FACTS

The defendants maintained at the trial that the conspiracy in the case at bar as attempted to be proven was one existing in the Dominion of Canada, or at all events beyond the territorial limits of the United States, with overt acts committed in the Northern District of California, the district of trial of the defendants; that if such be the conspiracy, the venue thereof was not properly laid in the district of trial and did not exist in any district of the United States. The defendants moved to direct a verdict upon this ground which motion was denied. (R. 318, 319.) This action of the Court was made the subject of Assignment of Error No. 95. (R. 740.) The Circuit Court of Appeals sustained the action of the District Court. (R. 847.)

ARGUMENT

1. The Offense as Developed by the Proof of the Government and Submitted to the Jury Consisted of a Conspiracy Entered Into In Canada and Overt Acts In Furtherance Thereof In San Francisco Bay.

To determine the conspiracy in the case at bar from the record, it is important for the court to note the activities of defendants in the Bay of San Fran-

cisco and the *time* of their occurrence. These defendants naturally group themselves into five separate parts, each group being unconnected, either in participation or knowledge, with the other:

1. *Magruder* and *Clance*—Operators of motor boat, *Viz-4*, employed by one Sam Terry, took liquor from *Qadra* sometime between September 20 and 24. (R. 203.) McLennon Diary shows September 31 (R. 168).

2. *Sam Crivello*—Vague in his statement as to time. Claimed to have been sent by Belanger to *Quadra* with bags and to have been sent by Quartararo to get cargo from *Quadra* and *Malahat*. (R. 216-235.) McLennon first shows Sam Crivello booked the *Quadra* on September 26. (R. 169.) *Marino Crivello* claims to have been employed by Belanger pursuant to introduction by Quartararo to transfer cargo of *Malahat* to *Quadra* and bring liquor from *Malahat*. (R. 253-256.) Witness unreliable as to time, but claims he went out immediately on employment. McLennon Diary shows Marino Crivello boat *Marconi* present on September 22. (R. 169.)

3. *Allen and Nielson*—Convicted herein. Brought liquor from the *Quadra* into San Francisco on motor boat *903-B* in October, 1924.

4. *Mackenzie and Pensotti*—Convicted herein. Operated boat *C-55* with liquor aboard alongside of *Quadra* at time of seizure.

5. *Unknown Conspirators*—Operators of following motor boats indicated to have been alongside of *Quadra*:

September 20—*C-731*.
September 26—*Pilgrim*.
September 27—*Charles Truelson* and *No. 3682*.
October 7—*C-808* and *Ocean Queen* (R. 167, et seq.).

Motor Boat *Florence* (R. 228).

In addition to the defendants represented in the foregoing groups, the remainder may be divided into two classes:

6. The officers and members of the crew of the *Quadra*, twenty-three in number.

7. Defendants who were directors, or rather whose names are identical with the directors of the Consolidated Exporters Company, consignor of the cargo, and Canadian-Mexican Shipping Company, owner of the ship *Quadra*, about fifteen in number.

At the trial, no evidence was offered to show that the wholesale activity in and beyond the Bay of San Francisco was the result of *any* common design, combination, or conspiracy unless the facts referred to immediately below constituted the conspiracy in which these apparently unrelated groups of defendants were engaged: Evidence of the following facts as offered and admitted over objection against all defendants: That the Consolidated Exporters Company and the Canadian-Mexican Shipping Company were incorporated more than a year prior to the presence of the *Quadra* off the coast of California; that certain persons were the directors of said corporations in the year 1924; that the *Quadra* was loaded with liquor in Vancouver in September, 1924, and left there on September 10, 1924; that its cargo was destined according to various shipping articles executed in Vancouver prior to departure for La Libertad; that the members of the crew of the *Quadra* performed acts of transfer and sacking of cargo en route to California, and that it arrived off the coast of California around September 15, 1924.

The first overt act alleged in the indictment begins as follows: (R. 13)

> "Said defendants, and each of them, did at Vancouver, B. C., in the month of September, 1924, cause the steamer Quadra to be loaded with * * * intoxicating liquor, and did cause said steamer Quadra * * * to leave said port of Vancouver, B. C., and proceed to a point opposite and within a distance of less than twelve miles from said Farallone Islands * * *"

Elsewhere in said indictment it is alleged:

> "That said conspiracy * * * was continuously * * * and particularly at the time and times of the commission and consummation of each and all of the overt acts in this indictment set forth and up to and including the time of filing of this indictment in existence and process of execution."

Therefore the preliminary preparations of the *Quadra* and its departure from Vancouver laden with liquor with the point of destination claimed to be false constitute, we believe, the only facts which remotely tend to show or from which, an inference can be drawn, that a conspiracy existed pursuant to which all acts of all defendants were done. All the acts appertaining to the formation of the conspiracy and all of the persons concerned therein were in the Dominion of Canada or on the high seas and at all events beyond the territorial limits of the United States.

The record further discloses that the trial court assumed jurisdiction upon the theory that regardless of

the place of formation of the conspiracy the overt act gave jurisdiction to the district where the overt act was committed. The trial judge said in substance in this regard as follows:

> "These defendants, moreover, are charged with conspiracy. Conspiracy may be tried in the place where the conspirators agreed to the wrongful act, which is the object of the conspiracy; or in any jurisdiction where one of the overt acts is committed. Rex. vs. Brisac, 4 East. 164. And is again settled by this case of Latham vs. United States." (R. 57).

Further, the trial court in instructing the jury, instructed as follows:

> "The indictment in effect charges that a certain corporation formed in a foreign country, to wit, the Dominion of Canada, entered into a plan by which liquor was to be shipped at sea ostensibly and under the provisions of her manifest for delivery in another foreign country, to wit, Mexico. It is charged that that was a mere cloak or blind and that the real intent and purpose of the shipping of the liquor by various (483) vessels plying out of the harbor of Vancouver was to lie off the coast of the United States and to land the liquor illegally and unlawfully upon our shores.
>
> "It is then charged that in effect Captain Ford, the Chief Officer Mr. Harris, the Second Officer Mr. Evelyn, and members of the crew of the 'Quadra' loaded upon that vessel a large quantity of intoxicating liquor, the manifest providing that that liquor was for delivery at La Libertad; that it was the intent and purpose, however, for that ship to come as close as she dared to the Coast of

California and to deliver that liquor by means of small boats plying from the ship to the shore in the State of California for distribution and sale to our citizens.

"It is charged that two persons residing, or at least one of them residing in the State of California and the other sojourning here, and other persons who are not brought before the court, were the means or agency by which that scheme was to be carried out to its end. In other words, that they were to provide the vessels by which the liquor was brought from the ships to the shore, and to provide for its sale and distribution after it was landed on the coast of the State of California.

"Now, Gentlemen, if that be true then I instruct you that every person who in any manner participated in that scheme was guilty of the conspiracy as charged in the indictment." (R. 601).

The trial court further instructed as follows:

"Now first, Gentlemen, as to the captain of the ship 'Quadra'; If you find from the evidence, Gentlemen, that Captain Ford took command of the steamer 'Quadra,' loaded her with intoxicating liquor, sailed her to the neighborhood of our shore and there proceeded to cause the liquor to be disembarked from her hold into the small vessels and brought to the coast of California, and if you find at the same time that he did that in conjunction with or in understanding with any person whomsoever then you must find him guilty of the crime as charged." (R. 603).

To the giving of both of these instructions, exception was taken (R. 611 and 612).

The record therefore shows that the crime which the Government attempted to prove at the trial which

the trial judge submitted to the jury consisted of a conspiracy formed in Canada and followed by overt acts committed in the Bay of San Francisco. The record further shows that the trial court ruled as a matter of law that it had jurisdiction to try such an offense.

2. The Circuit Court of Appeals Sustained the Jurisdiction of the District Court by Basing It Upon a Different Conspiracy from That Proved by the Government or Stated by the Trial Court and Upon One Not Supported by the Record.

When the case came before the Circuit Court of Appeals, that court said:

> "The question of venue is less readily answered. It was incumbent on the Government to prove that these plaintiffs in error were parties to a crime committed in the northern district of California * * *" (R. 847).

The Circuit Court of Appeals was apparently unwilling to assume the extreme legal position adopted by the District Court. It did not rule as a matter of law that the District Court had jurisdiction over a crime consisting of a conspiracy formed in Canada and an overt act committed in the Bay of San Francisco. The Circuit Court of Appeals undertook to select a different conspiracy from the one proved by the Government and submitted to the jury by the trial court and to state that the crime for which these defendants were convicted consisted of this other and different conspiracy and the overt acts committed in the Bay of San Francisco. The conspiracy as stated by the Circuit Court of Appeals is as follows:

> "On the entire case the conclusion is warranted that about the 1st of May, 1924, Quartararo and Sam Crivello, within the Northern District of California, conspired to import and possess liquor; that Belanger and his corporation either had an understanding with Quartararo at that time or shortly thereafter became parties to the conspiracy; and that the departure of the Quadra with her cargo from Vancouver on the 9th of September, was pursuant to the same conspiracy." (R. 849.)

It is apparent therefore: *first*, that the conspiracy as stated by the Circuit Court of Appeals was entirely different from that stated by the District Court and upon which these defendants were convicted; *second*, the conspiracy as found by the Circuit Court of Appeals is based upon the transactions arising out of the so-called "Norburn incident" discussed on pages 112 to 121 of the defendants' brief, and which were not shown to be connected in any manner with any of the other transactions put in evidence by the Government; *third*, that if the conspiracy referred to by the Circuit Court of Appeals between Quartararo and Sam Crivello within the northern district of California was the conspiracy for which these defendants were tried, then all the evidence relating to the formation of the corporations in Canada, the loading and departure of the *Quadra*, the diary of one of the seamen on the *Quadra*, the activity of the operators of motor boats not shown to be connected with Quartararo, Crivello, or Belanger, were wholly irrelevant, immaterial, and inadmissible.

We therefore submit that there is nothing whatever in the record to support the position of the Circuit Court of Appeals that these defendants were tried and

convicted of the conspiracy as stated by that court, and that there is no escape from the conclusion reached by the District Court that these defendants were tried and convicted of a crime which consisted of a conspiracy formed in Canada and completed, if it could be completed, by overt acts committed in the Bay of San Francisco. The correctness, therefore, of the position of the District Court on the proposition of law that venue was properly laid in that court for the trial of such an offense is squarely raised and has been amply reserved by the motions for a directed verdict, for the motion in arrest of judgment, the exceptions to the instructions of the trial court and the assignments of error based thereon. So far as the Circuit Court of Appeals found that the question of venue was not properly raised by the exceptions to the trial judge's charge, it would seem that the court was clearly in error. The trial judge, being fully apprised of the nature of the defendants' objection to his charge by reason of the argument of defendants' counsel on the motion for a directed verdict, interrupted their objection to his charge, stating that he fully understood the nature of such objections (R. 612).

3. The District Court Did Not Have Jurisdiction of the Crime Proved by the Government and Submitted by the Trial Judge to the Jury.

The common law gave no jurisdiction to the District Court to try an offense consisting of a conspiracy formed in Canada and an overt act committed in San Francisco and no statute has conferred this jurisdiction.

The rule of criminal procedure is that one who commits a crime is answerable therfor only in the jurisdiction where the crime is committed, and in all criminal prosecutions, in the absence of statutory provisions to the contrary, the venue must be laid in the county or district of the offense, and must be proven as laid. *Gut vs. Minnesota,* 9 Wall. 35; *McKenna vs. Fisk,* 1 How.. 241; *U. S. vs. Davis,* Fed. Cas. No. 14932.

The common law rule relating to venue is well stated in *16 Corpus Juris,* Sec. 294, p. 195, as follows:

> "It was a rule of the common law that, when an offense was constituted by a series of acts, a part of which were done in one county and a part in another, there could be no prosecution in either, unless so much was done in the one as would constitute a complete offense."

This rule has been changed by statute in England and in the United States.

The pertinent language of the Sixth Amendment is as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and *District wherein the crime shall have been committed,* * * *"

Section 731 of the Revised Statutes (Section 42 of the Judicial Code) provides:

> "When any offense against the United States is begun in one Judicial District and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either Dis-

trict, in the same manner as if it had been actually and wholly committed therein."

The case of *Hyde vs. U. S.;* 225 U. S. 347, (cited by the Circuit Court) involved the question of the right to charge and try a conspiracy in the District of Columbia and give to the Supreme Court of said District jurisdiction where the conspiracy was formed in California and an overt act was committed in Washington, D. C.

Justice McKenna, delivering the opinion of this court after an analysis of the relation of the combination or *conspiracy* and the *overt act* to the crime defined by the conspiracy statute, sustained the jurisdiction of the District of Columbia Court primarily on the theory that a conspiracy came within the meaning of Sec. 731. Therein the learned Justice declared:—

> "If the unlawful combination and the overt act constitutes the offense, as stated in Hyde vs. Shine, marking its beginning and its execution or a step to its execution, Sec. 731 of the Revised Statutes (U. S. Comp. Stat. 1901, p. 585) must be applied. That section provides that 'when any offense against the United States is begun in one judicial district and completed in another, it shall be deemed to have been committed in either, and may be dealt with, inquired of, tried, determined, and punished in either district, in the same manner as if it had been actually and wholly committed therein.' This provision takes an emphasis of signification from the fact that it was originally a part of the same section of the statute which defined conspiracy—that is, Sec. 30 of the act of March 2, 1867, 14 Stat. 484, 169."

In the *Hyde* case we find a vigorous dissent by Justice Holmes, concurred in by Justices Lurton, Hughes and Lamar. Therein Justice Holmes declared:

> "The cases in this court have agreed that the statute has not made the overt act a part of the crime, which still remains the conspiracy alone. By the same reasoning the overt act gives no ground for the application of Rev. Stat. Sec. 731, creating a double jurisdiction when an offense against the United States is begun in one district and completed in another. The act is no part of the conspiracy even if it is an element in some other crime, as is stated in so many words in *Hyde v. Shine*, 199 U. S. 62, 76; quoting the well known statement in *United States vs. Britton*, 108 U. S. 199, 204; that the statutory requirement merely affords a locus penitentia."

It is clear, therefore, that the *Hyde* case marked an extension from the rules of law as theretofore understood. This extension consisted in this: That where an offense consisted of a conspiracy in one district of the United States and an overt act in another district, venue might be laid either in the district of the conspiracy or in the District of the overt act, whether or not all the defendants indicted had been present in the district of the indictment. The *Hyde* case did not decide that where a conspiracy had been entered into beyond the jurisdiction of the United States and an overt act committed in any district of the United States, the court of the district where the overt act was committed had jurisdiction, or even that a crime had been committed.

Clearly, the *Hyde* case establishes that both the conspiracy and the overt act are essential elements in the crime denounced by Section 37 of the Criminal Code. This being true, it follows that the crime comes within the letter and spirit of Section 731 of the Revised Statutes. Applying the same principle to this case, the conspiracy here does not come within the letter or the spirit of Section 731 of the Revised Statutes.

In short, a District Court of the United States would have jurisdiction of the crime of conspiracy in either one of two cases: First, where both the conspiracy and the act occurred within its district; second, where the conspiracy occurred in one district and the overt act occurred in another and the court had jurisdiction over either district. Clearly, in the present case neither of these situations exists. Upon the case as submitted to the jury, the conspiracy was clearly entered into in Canada. Therefore, the northern district of California was not the district in which both the conspiracy and the act occurred. Similarly the northern district of California was not the district in which a crime begun in some other district of the United States was completed, since the conspiracy was not begun in any other district of the United States, but in a foreign country. It therefore seems inescapable that the District Court had no jurisdiction over the crime as developed by the testimony of the Government, as outlined by the trial judge, and as submitted to the jury.

Conclusion.

We therefore respectfully submit that the proof offered by the Government disclosed that no crime had been either committed in the northern district of California or had been begun in some other district of the United States and been completed in the northern district of California; that the trial judge in his rulings of law and charge to the jury recognized this to be the case; and that the trial court erred in holding that venue was properly laid in that court for the trial of an alleged crime consisting of a conspiracy entered into beyond the jurisdiction of the United States, followed by an overt act in furtherance thereof, committed in the northern district of California.

Respectfully submitted,

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